IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1818 OF 2005

The Mumbai Corporation of Greater Mumbai, through the General Manager, Bombay Electric Supply and Transport Undertaking. ... Petitioner.

V/s.

1. The Union of India,

2. The Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench,

3. The Commissioner for Central Excise, Mumbai-I. ... Respondents.

Siraj Rustamjee with Sameer Chitnis i/b. Crawford Bayley & Co. for the petitioner.

R.V.Desai, Senior Counsel with A.S.Rao for the respondents.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 14th September, 2005.

P.C. :

. Rule, returnable forthwith. Heard finally by consent of parties.

2. This petition is directed against the order dated 4th September, 2003 passed by the Customs Excise and Service Tax Appellate Tribunal ("Tribunal" for short) refusing to condone delay of 316 days in filing appeal. On the last date of hearing, after hearing the petitioner for sometime, petitioner had sought time to file better affidavit so as to give

minute details which has caused delay caused in preferring appeal. Accordingly, vide our order dated 22nd August, 2005 time was granted. Persuant to the said order, now additional affidavit dated 2nd September, 2005 has been filed on record disclosing reasons with material facts and particulars. The said affidavit is taken on record.

3. The reasons in the affidavit are spelt out in para-5 onwards. The said affidavit is of Mr.Swadheen S. Kshatriya, General Manager of the BEST Undertaking.

4. Having examined the affidavit and reasons disclosed, we are satisfied that the reasons disclosed warrant condonation of delay in filing appeal. The affidavit discloses the bonafides on the part of the petitioner. Invocation of wrong remedy at every steps has basically resulted in delayed filing of appeal. Since entire tax has already been paid by the petitioner, the respondents are not going to be prejudiced, if delay is condoned. There is no serious contest from the respondents.

5. In the result, for the reasons recorded hereinabove, impugned order dated 4th September, 2003

is set aside. Delay in filing appeal is condoned. Appeal is restored to the file of the Tribunal. The Tribunal is directed to decide the appeal on its own merits as expeditiously as possible, at any rate, within a period of four months from the date of receipt of this order.

6. Rule is made absolute in terms of the above order with no order as to costs.

(J.P.DEVADHAR, J.) **(V.C.DAGA, J.)**